RAMU ANNADAVASCAN & ANOR.

v.

PUBLIC PROSECUTOR

HIGH COURT OF CRIMINAL APPEAL, SINGAPORE
WEE CHONG JIN CJ
LP THEAN J
FA CHUA J
[CRIMINAL APPEAL NO. 8 OF 1984]
29 JANUARY 1985

CRIMINAL LAW AND PROCEDURE: *Appeal from conviction - Offence under ss. 302, 34 of the Penal Code [Sing] - Absence of common intention to cause injuries - Sufficient in the ordinary course of nature to cause death - Whether facts indicated common intention.*

The appellants were convicted of an offence punishable under s. 302 (read with s. 34) of the Penal Code (Chapter 103).

The facts proved before the trial Judges were that the appellants were together with the deceased in a lorry proceeding towards Changi Airport via East Coast Parkway. Along the way the appellants quarrelled with the deceased and the lorry was driven to the side track where all three alighted. The first appellant struck the first blow on the deceased's head with a rake. The deceased fell, got up and ran and the first appellant tried to catch him but failed and called out to the second appellant to catch the deceased which the second appellant did. The second appellant then hit the head of the deceased twice with the rake. The first and second appellants then set the deceased on fire.

The first appellant appealed on the ground that there was an absence of common intention to cause injuries sufficient in the ordinary course of nature to cause death. Since the trial Judges found that the fatal blow was inflicted by the second appellant and at that time there was no common intention formed by the appellants. The second appellant did not dispute the finding of the trial Judges.

Held:

On the evidence before the trial Judges it could hardly be said that both the appellants at the time or immediately before the fatal blow was afflicted, did not have the common intention to cause injuries to the deceased which in the ordinary course of nature would cause death. The evidence also showed that the deceased was still alive when the second appellant poured petrol on the deceased and the first appellant set fire to the deceased.

[Appeal dismissed. Convictions of both appellants affirmed]

Legislation referred to:

Criminal Procedure Code [Sing], s. 121(6)
Penal Code (Cap 103) [Sing], ss. 34, 302

For the Public Prosecutor - Spencer Gwee
For the 1st appellant - Subhas Anandan
For the 2nd appellant - R. Pala Krishnan

JUDGMENT

LP Thean J:

The appellants were convicted of the following offence, namely:

> That you between 1.30 p.m. on 20 September 1981 and 9.25 a.m. on 25 September 1981 at East Coast Parkway, 5 kilometres, Singapore, in furtherance of the common intention of you both, committed murder by causing the death of one, Kalingam s/o Mariappan, and you have thereby committed an offence punishable under s. 302 read with s. 34 of the Penal Code (Chapter 103).

The facts as proved before the learned trial Judges are these. On 20 September 1981 at about 12 o'clock noon the first and second appellants went to a coffee stall at a Hawkers' Centre. There they met the late Kalingam s/o Mariappan (the "deceased") whom they both knew. The first appellant had known the deceased for a number of years but there was bad blood between them, and they had frequent quarrels and fights. The appellants had a conversation with the deceased and together they had some drinks; the appellants each had a beer and the deceased had a stout. After that the appellants invited the deceased to go with them to Changi Airport for some drinks. At first the deceased refused but later he was persuaded to go along. The first appellant drove his uncle's lorry, No. Y5505 with the deceased seated beside him and the second appellant at the back. On the way there the first appellant had a quarrel with the deceased and the first appellant drove the lorry to a side track at East Coast Parkway and stopped the lorry. All three of them alighted from the lorry. The first appellant took a rake which was in the lorry and hit the deceased on the head with it. The deceased fell, got up and ran. The first appellant tried to stop him but failed. He called upon the second appellant to catch the deceased which the second appellant did. The first appellant then went up to the deceased, caught hold of him and dragged him along for a short distance. He gave the rake to the second appellant and the second appellant then hit the deceased twice on the head with the rake. The blows landed on his nose and he fell. The first appellant then placed his foot on the deceased's chest and asked the second appellant to bring some petrol from the lorry. The second appellant brought the petrol, poured it over the deceased's body and the first appellant then lighted a match and set fire to the deceased, who got up and ran around howling in pain. They then left the deceased.

Before the learned trial Judges there was adduced expert evidence from Professor Chao Tzee Cheng, the Senior Forensic Pathologist, who performed an autopsy on the deceased. He reported that there were 3 serious fractures in the skull of the deceased: (1) a hairline cracked fracture of 3 cm. on the right frontal bone, (2) a depressed fracture 2.5 cm. on the right parietal bone and (3) a cracked fracture 3 cm. on the right parietal bone at the temporal suture. In his opinion injuries (2) and (3) had caused internal brain damage which in the ordinary course of nature would have caused death and death would have followed a few minutes after the injuries. Professor Chao also said that when the deceased was on fire he was still active and that 40% of his total body surface was burnt and such extent of burn would be sufficient in the ordinary course of nature to cause death.

On the evidence the learned trial Judges found it was the second appellant who inflicted the fatal blow on the deceased's head, and that there was common intention of both the appellants to cause injuries to the deceased which in the ordinary course of nature would cause death. They said, at pp. 28-29:

> Admittedly, the second accused might not have had the intention to cause hurt to the deceased even up to the time when the lorry stopped at the track off East Coast Parkway but when he chased and caught the deceased, that was when he formed the intention to join the first accused to cause hurt to the deceased. What followed clearly established that common intention. After the second accused caught the deceased the first accused came and grabbed hold of the deceased by the neck from the behind. Then the second accused hit the deceased on the head with the rake which the first accused had handed to him. Together they then set the deceased on fire.

Before us Mr. Subhas Anandan on behalf of the first appellant proceeded on only one ground of appeal, namely the absence of common intention to cause injuries sufficient in the ordinary course of nature to cause death, and expressly abandoned all the other grounds of appeal and in particular the contention that the statement made by the first appellant under s. 121(6) of the Criminal Procedure Code was not admissible on the ground that it was not made voluntarily. He argued that the learned trial Judges found that it was the second appellant, who inflicted the fatal blow on the deceased, and at that time no common intention had been formed by the appellants. He conceded, however, that at the time the second appellant poured petrol on the deceased both of them formed the common intention but at that time the deceased was already dead.

We were unable to accept this argument. On the evidence before the learned trial Judges it could hardly be said that both the appellants at the time or immediately before the fatal blow was inflicted did not have the common intention to cause injuries to the deceased which the ordinary course of nature would cause death. Further, the evidence also showed that the deceased was still alive when the second appellant poured petrol on the deceased and the first appellant set fire to the deceased.

Mr. Pala Krishnan on behalf of the second appellant did not really proceed with his argument on the appeal; he also abandoned the contention that the statement made by the second appellant under s. 121(6) of the Criminal Procedure Code was not admissible on the ground that it was not voluntary. Nor did he dispute the finding of the learned trial Judges that the second appellant inflicted the fatal blow. So far as the second appellant is concerned the absence of a common intention was immaterial as he was the one who inflicted the injuries which caused the death of the deceased, and on the evidence there was nothing which could be usefully urged on his behalf.

We therefore dismissed the appeal and affirmed the convictions of both the appellants.

Also found at [1985] 1 CLJ 220